

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE WASHINGTON MUTUAL, INC.  
SECURITIES, DERIVATIVE & ERISA  
LITIGATION

No. 2:08-md-1919 MJP

IN RE WASHINGTON MUTUAL, INC.  
SECURITIES LITIGATION

Lead Case No. C08-0387 MJP

This Document Relates to:

**DECLARATION OF STEVEN P.  
CAPLOW IN SUPPORT OF  
OPPOSITION TO PLAINTIFFS'  
MOTION TO REMAND**

*Lou Solton, Monterey County Treasurer, et  
al. v. Killinger, et al.* (No. 09-664-MJP)

***Note for Motion: October 2, 2009***

and

**ORAL ARGUMENT REQUESTED**

*City of San Buenaventura v. Killinger, et al.*  
(No. 09-816-MJP)

Steven P. Caplow declares as follows:

1. ***Identity of Declarant.*** I am a member of the firm of Davis Wright Tremaine LLP, and one of the counsel of record for Melissa Ballenger, Thomas W. Casey, Ronald J. Cathcart, Stephen J. Rotella, David C. Schneider, and John F. Woods (collectively, the “WaMu Officers”). I make this declaration in support of the Opposition to Plaintiffs’ Motion to Remand *Lou Solton, Monterey County Treasurer, et al. v. Killinger, et al.* (No. 09-664-MJP) and *City of*

1 *San Buenaventura v. Killinger, et al.* (No. 09-816-MJP). I have personal knowledge of the  
 2 matters stated in this declaration, and I could competently testify to them if called as a witness.

3 2. **Exhibit A.** I have attached as Exhibit A a true and correct copy of Judge Lewis  
 4 A. Kaplan's April 22, 2009, Order denying remand of Plaintiffs' claims in *In re Lehman*  
 5 *Brothers Securities and ERISA Litigation*, No. 09-MD-2017 (LAK) (S.D.N.Y.).

6 3. **Exhibit B.** I have attached as Exhibit B a true and correct copy of the Bylaws of  
 7 Washington Mutual, Inc. ("WaMu") as restated and amended through February 1, 2007.

8 4. **Exhibit C.** I have attached as Exhibit C a true and correct copy of the July 17,  
 9 2007, indemnification agreement between Stephen E. Frank and Washington Mutual, Inc.  
 10 establishing Washington Mutual's obligation to indemnify Mr. Frank against any and all  
 11 expenses arising from actions against him by virtue of his position as a Washington Mutual  
 12 director.

13 5. **Exhibit D.** I have attached as Exhibit D a true and correct copy of the December  
 14 16, 2008, Order of the United States Bankruptcy Court for the District of Delaware permitting  
 15 advancement of defense costs from the WaMu's D&O insurance policies.

16 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
 17 knowledge.

18 Executed this 21st day of September, 2009, at Seattle, Washington.

19  
 20 /s/ Steven P. Caplow  
 21 Steven P. Caplow, WSBA #19843  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 21, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via United States first-class mail, postage prepaid, to the non-CM/ECF participants indicated on the Manual Notice List.

DATED this 21st day of September, 2009.

Davis Wright Tremaine LLP

By /s/ Steven P. Caplow

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